
REMARKS

Claims 1-5 are pending in this application. Claims 1-5 stand rejected. By this Amendment, claims 1, 4, and 5 have been amended. The amendments made to claims 1, 4, and 5 do not alter the scope of this claim, nor have these amendments been made to define over the prior art. Rather, the amendments to claims 1, 4, and 5 have been made to improve the form thereof. In light of the amendments and remarks set forth below, Applicant respectfully submits that each of the pending claims is in immediate condition for allowance.

Paragraph 1 of the Office Action rejects claim 1 under 35 U.S.C. § 112, second paragraph. Applicant has amended claim 1 in light of the Examiner's rejection. As such, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Paragraph 3 of the Office Action rejects claims 1 and 2 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,778,334 ("Ozawa").

To anticipate a claim under 35 U.S.C. § 102, the cited reference must disclose every element of the claim, as arranged in the claim, and in sufficient detail to enable one skilled in the art to make and use the anticipated subject matter. See, PPG Industries, Inc. v. Guardian Industries Corp., 75 F.3d 1558, 1566 (Fed. Cir. 1996); C.R. Bard, Inc. v. M3 Sys., Inc., 157 F.3d 1340, 1349 (Fed. Cir. 1998). A reference that does not expressly disclose all of the elements of a claimed invention cannot anticipate unless all of the undisclosed elements are inherently present in the

reference. See, Continental Can Co. USA v. Monsanto Co., 942 F.2d 1264, 1268 (Fed. Cir. 1991).

Among the limitations in independent claim 1 not shown in the cited reference is a mode decision circuit

characterized in that when the output from said mode decision circuit represents a predetermined mode, said sound source signal is represented by a combination of a plurality of pulses wherein an amplitude or polarity of the pulse is calculated from said voice signal.

As disclosed in the Ozawa '334 patent, the mode discrimination circuit provides mode discrimination information to the adaptive code book circuit. However, there is no disclosure of a predetermined mode or the sound source signal being represented by a combination of a plurality of pulses where the amplitude or polarity of the pulse calculated from the voice signal. As such, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Claims 2 and 3 depend from, and contain all the limitations of claim 1. These dependent claims also recite additional limitations which, in combination with the limitations of claim 1, are neither disclosed nor suggested by Ozawa '334 and are also directed towards patentable subject matter. Thus, claims 2 and 3 should also be allowed.

Paragraph 4 of the Office Action rejects claim 4 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,659,661 (the "Ozawa '661 patent"). Applicant respectfully requests reconsideration and withdrawal of this rejection.

Among the limitations in independent claim 4 not present in the cited reference is a sound source signal generation unit adapted to generate a sound source signal from an adaptive code vector, a shift amount of a pulse position, and a gain code vector when the decision signal represents a predetermined mode.

In the Ozawa '661 reference, the sound source signal generation unit or excitation code book unit 120 reads out corresponding code vectors from a code book 125 and outputs excitation code vectors based on a formula. However, there is no disclosure of the sound source signal generation unit as explicitly recited in Applicant's claim which generates a sound source signal from an adaptive code vector, a shift amount of a pulse position, and a gain code vector. As such, the Ozawa '661 reference fails to anticipate Applicant's claim.

Independent claim 5 stands rejected under 35 U.S.C. § 103(a) as being anticipated by the Ozawa '661 patent in view of U.S. Patent No. 6,272,459 ("Takahashi"). Applicant respectfully requests reconsideration and withdrawal of this rejection.

To establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or combine references to arrive at the claimed subject matter. The prior art references must also teach or suggest all the limitations of the claim in question. See, M.P.E.P. § 706.02(j). A reference can only be used for what it clearly discloses or suggests. See, In re Hummer, 113 U.S.P.Q. 66 (C.C.P.A. 1957); In re Stencel, 4 U.S.P.Q.2d

1071, 1073 (Fed. Cir. 1987). Here, the references, whether taken individually or in combination, do not disclose or suggest the invention claimed by the Applicant.

Among the limitations of independent claim 5 not shown in the prior art is a sound source signal generation unit that generates a sound source signal by using an adaptive code vector and a gain code vector. The Examiner admits that the Ozawa '661 patent fails to disclose the above-recited code vectors. Applicant submits that Takahashi fails to cure this deficiency. In Takahashi, the error evaluating circuit 10 calculates the mean square error associated with the error vector and searches for an adaptive code vector which gives a minimum means square. However, there is no disclosure in Takahashi of a gain code vector. As such, the combination of the Ozawa '661 and Takahashi fail to disclose Applicant's claim.

Applicant has responded to all of the rejections and objections recited in the Office Action. Reconsideration and a Notice of Allowance for all of the pending claims are therefore respectfully requested.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If the Examiner believes an interview would be of assistance, the Examiner is welcome to contact the undersigned at the number listed below.

Dated: March 23, 2004

Respectfully submitted,

By 

Ian R. Blum

Registration No.: 42,336

DICKSTEIN SHAPIRO MORIN &
OSHINSKY LLP

1177 Avenue of the Americas - 41st Floor
New York, New York 10036-2714
(212) 835-1400

Attorney for Applicant

IRB/mgs